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May 22, 2009

The Honorable Arne Duncan
Secretary
United States Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Secretary Duncan:

Thank you for appearing before the House Committee on Education and Labor to discuss the President's education agenda. I appreciate the testimony that you provided to the Committee and your willingness to stay and answer questions from Members past your scheduled departure time.

During your testimony, you discussed several steps that the Department was preparing to take to address the improper use of seclusion and restraint techniques that the Committee heard about earlier in the week. One of these initiatives was to require States to report on whether they have plans in place guaranteeing the safety of their students, including those students with disabilities. As part of the Committee's work in examining the issue of seclusion and restraints in our nation's schools, I am writing to commend you for acting on this important matter and to request additional information on the Department's plans to protect the safety of students:

- (1) Please provide additional detail about the proposed reports that the Department will require from the States on the improper use of seclusion and restraint techniques.
- (2) In guidance issued last year, the Department stated that, "...while IDEA (the Individuals with Disabilities Education Act) emphasizes the use of positive behavioral interventions...it does not flatly prohibit the use of mechanical restraints or other aversive behavioral techniques for children with disabilities." The Department noted that State law may address whether restraints may be used and, if restraints are allowed, the "...critical inquiry is whether the use of such restraints or techniques can be implemented consistent with the child's IEP (Individualized Education Plan)..." Has the Department issued any

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guidance to States regarding the use of seclusion and restraint policies and how they can be implemented consistent with the requirements of a student's IEP?

- (3) For the last five years, please provide information on the number, nature, and resolution of any allegations of abuse from seclusion and restraint techniques that have been reported to the Department.
- (4) In the Department's monitoring of State and local educational agencies' ability to provide a free appropriate public education (FAPE) in the least restrictive environment under IDEA, does the Department examine whether seclusion and restraint techniques are discussed with parents through the development of their child's IEP and/or Functional Behavioral Assessment (FBA)?
- (5) Under IDEA, States receive professional development funding to provide training to teachers on positive behavioral interventions and other supports to meet the needs of students with significant health, mobility, or behavioral challenges. Can the Department document whether any funding has gone to train teachers on the responsible use of seclusion and restraint techniques?
- (6) What information or advice does the Department's Parent Training and Information Centers provide to parents on the use of seclusion and restraints in the classroom?

I would appreciate a response to these questions and any other information you believe is relevant to fully understand this issue. Once again, thank you for your upcoming actions to protect the rights of all students, including those students with special needs. If you have any questions, please do not hesitate to contact James Bergeron on my staff at (202) 225-6558.

Sincerely,

Howard P. "Buck" McKeon
Senior Republican Member